

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 23-01025-mg

12 - - - - - x

13 HERRMANN,

14 Plaintiff,

15 v.

16 CELSIUS NETWORK LLC ET AL.,

17

18 Defendants.

19 - - - - - x

20 Adv. Case No. 22-01179-mg

21 - - - - - x

22 FRISHBERG,

23 Plaintiff,

24 v.

25 CELSIUS NETWORK LLC ET AL.,

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Defendants.

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United States Bankruptcy Court

One Bowling Green

New York, NY 10004

May 17, 2023

10:00 AM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: KS

1 HEARING re Hearing Using Zoom for Government Re: Debtors'
2 Motion Seeking Entry of an Order (I) Authorizing the Debtors
3 to Enter into Witness Cooperation Agreements with Certain
4 Current and Former Employees, (II) Authorizing Reimbursement
5 of Past and Future Out-Of-Pocket Expenses of Cooperating
6 Witnesses, Including Attorneys Fees, and (III) Granting
7 Related Relief. Doc## 2147, 2223, 2227, 2230, 2269, 2308,
8 2328, 2341, 2390, 2393, 2395, 2441, 2504, 2520, 2643, 2644)

9
10 HEARING re Hearing Using Zoom for Government RE: Application
11 of Connor Nolan Pursuant to 11 U.S.C. §§ 503(b)(3)(D) and
12 503(b)(4) for Allowance and Payment of Professional Fees and
13 Expenses Incurred in Making a Substantial Contribution (ECF
14 Doc. # 2045, 2434, 2373, 2374, 2382, 2386, 2387, 2441, 2520,
15 2599, 2616)

16
17 HEARING re Hearing Using Zoom for Government RE: Motion for
18 Stay Pending Appeal (Doc## 2545, 2375, 2612)

19
20 HEARING re Motion for Entry of an Order (I) to Investigate
21 if the Debtor and/or Debtors Legal Counsel Aided in Granting
22 Financial Relief to an Unsecured Creditor after the February
23 9th, 2023 Proof of Claim Bar Date Occurred, (II) to Remedy
24 Any Clear Violations of Bankruptcy Law if Such Acts are
25 Found to be True, (III) Granting Related Relief filed by

1 Jason Amerson. (Doc. no. 2252, 2330, 2333, 2530, 2532,
2 2615) .

3
4 HEARING re AMENDED Motion for Entry of an Order (I) To
5 Request an Injunction or Sanction on Inappropriate
6 Communications Between Debtor and Unsecured Creditor(s) ,
7 (II) Granting Related Relief. (Doc. no. 2314, 2235, 2332,
8 2532, 2615) .

9
10 Adversary proceeding: 23-01025-mg Herrmann v. Celsius
11 Network LLC et al
12 HEARING re Pre-Trial Conference Using Zoom for Government.
13 (Doc #1 to 6)

14
15 Adversary proceeding: 22-01179-mg Frishberg v. Celsius
16 Network LLC et al
17 HEARING re Pretrial Conference Using Zoom for Government.
18 (Doc ## 1, 16 to 19, 21 to 27) .

19
20 HEARING re Status Conference RE: Celsius/Core Scientific
21 Dispute. (Doc ## 917, 997, 1003, 1114, 1130, 1132, 1133,
22 1140, 1139 to 1144, 1177, 1182, 1200, 1204, 1283, 1366,
23 1694, 1841, 1907, 2055, 2413))

24
25 Transcribed by: Sonya Ledanski Hyde

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10 ALSO PRESENT:

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12 DEAN ADLER

13 NELLY ALMEIDA

14 JASON AMERSON

15 PHILIPPE NIMMA AZIMZADEH

16 DAVID BARSE

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1 P R O C E E D I N G S

2 CLERK: All right. For the parties that have
3 joined, if anyone is speaking on the record this morning and
4 has not given their appearance yet, please unmute your line
5 and I will take your appearance. All right. Final call.
6 Judge, would you like me to read the information into the
7 record?

8 THE COURT: Yes, please. Go ahead Deanna.

9 CLERK: All right. Please note the following.
10 All parties are strictly prohibited from making any
11 recording of court proceedings whether via video, audio,
12 screenshot, or otherwise. Violation of the prohibition may
13 result in the imposition of monetary and nonmonetary
14 sanctions. The Clerk of the Court maintains an audio
15 recording of all proceedings, which constitutes the official
16 record.

17 Parties must state their name each time they speak
18 on the court record. A party must join with the both of
19 first and last name to be admitted from the waiting room.
20 Parties that join with initials or partial name,
21 designations such as iPhone, et cetera, will not be
22 admitted.

23 Would you like to begin, Judge?

24 THE COURT: Yes, I would. Thank you very much,
25 Deanna. All right. Good morning, everyone. We're

1 obviously on the record in Celsius Network LLC, 22-10964. I
2 have the amended agenda in front of me. I want to advise
3 everyone that we have a very tight time schedule today. We
4 need to end this hearing by 10 minutes to 11:00. I have
5 another large hearing beginning at 11:00. There are certain
6 matters that are on the calendar for today that when we get
7 to them, I may not hear argument and may rule just based on
8 the papers. But let's begin who's going to begin for the
9 Debtors.

10 MR. KWASTENIET: Thank you, Your Honor. Ross
11 Kwasteniet from Kirkland and Ellis on behalf of the Debtors
12 can you see me and hear me okay, Your Honor?

13 THE COURT: I can, very well. Go ahead.

14 MR. KWASTENIET: Thank you, Your Honor. Your
15 Honor, as has been customary, we were prepared to open the
16 hearing with a -- with a brief business update from Mr.
17 Ferraro --

18 THE COURT: And I think you should, let's do that.

19 MR. KWASTENIET: -- well, let -- let us do that,
20 we'll try to be quick about it. We did file a presentation
21 on the docket last night for anybody who wants to follow
22 along. It was filed at Docket Number 2655.

23 And Deanna, if I can request that my colleague,
24 Mr. Koenig, be made a co-host for purposes of screen
25 sharing, we'll -- we'll jump right into it.

1 Good morning, Mr. Ferraro, I'm wondering if you
2 can please tell the Court about the current status of the
3 custody and withhold account withdrawal processes.

4 MR. FERRARO: Yeah, hi, Ross, and good morning,
5 Your Honor. Thanks for your time today. I will be quick.
6 The company's continuing to process withdrawals to eligible
7 custody accountholders. Since February 15th, 53 percent of
8 the users with balances sufficient withdrawal fees have
9 successfully passed KYC. When measured in value, those
10 users represent almost 90 percent. Today we have completed
11 \$30 million of share custody withdrawals, or accounts below
12 the preference threshold, totaling about 75 percent of the
13 distributable value, with approximately \$9 million remaining
14 to be withdrawn.

15 With respect to the remaining assets in the
16 custody accounts that were not part of the pure custody
17 tranche, users who opted into the custody settlement will
18 receive 72.5 percent of the assets that remain in their
19 custody accounts in two payments of 36.25 percent each, less
20 any withdrawal fees. Overall, more than 70 percent of
21 eligible users opted into the settlement before the April
22 24th deadline, representing 85 percent of the value. We
23 began processing these withdrawals on May 9th and have
24 completed over 27 million of withdrawals to date.

25 On April 20th, the Court approved a settlement

1 amongst Celsius, the Withhold Ad Hoc Group, and the UCC that
2 provided participating members of the Withhold Ad Hoc Group
3 an in-kind distribution of 15 percent of their eligible
4 claim, with the remaining 85 percent of the electing
5 creditor's claim to be treated as an earned claim under the
6 plan. In the next week, we will be -- we will start the KYC
7 process and withdrawals from the platform for these
8 participating withhold accounts, as well as creditors who
9 made deposits after the petition date.

10 Now, turning to the next slide.

11 MR. KWASTENIET: Thanks, Mr. Ferraro. Can you
12 please provide an update on the company's current mining
13 operations?

14 MR. FERRARO: Yeah. We ended April with 53,000
15 rigs deployed. Since March we have deployed 8,000 machines.
16 The increase was driven by the deployment of 7,000 rigs at
17 the Heart of Montana facility. We expect to be at full
18 capacity at the Harden facility with 13,500 rigs online and
19 hashing by the end of June.

20 For April, we had an adjusted EBITA of 1.4
21 million. Up 53 percent from March on higher margins and
22 improved up time. Quick reminder EBITA for this business is
23 effectively the pretax income adjusted to add back
24 depreciation and is a good proxy for cash flow from
25 operations. Mining revenue was \$8.4 million in April, up 31

1 percent to March. The adjusted gross margin was 26 percent
2 in April, up ten percent from the prior month, largely
3 driving by favorable bitcoin price performance. The out
4 time or the percentage of time our machines are hashing
5 increased to 68 percent in April, an improvement of nine
6 percent to March.

7 Moving on to the next slide. This slide notes a
8 longer trend of the metrics I've just discussed. On the
9 bottom left graph, you'll see the 53,000 rigs deployed at
10 the end of April, which is almost double the 28,000 deployed
11 immediately the Core Scientific contract rejection in early
12 January. With the new hosting agreements, we expect the
13 rigs deployed to increase to 58,000 by the end of May and
14 expect 68,000 rigs to be deployed by the end of June. So,
15 we're continuing to successfully mitigate the impact from
16 the 33,000 or the 37,000 that were part of the core
17 restructuring.

18 Now, turning to the last slide.

19 MR. KWASTENIET: Thanks, Mr. Ferraro, can you now
20 provide an update on the company's financial condition?

21 MR. FERRARO: Yes, Ross. As a quick reminder, we
22 started the case with \$138 million of cash. We now have
23 \$142 million on hand as of April, month end, an increase of
24 \$4 million since the petition date.

25 MR. KWASTENIET: Thanks. Just one last question

1 for you, Mr. Ferraro, the Debtors recently filed, last night
2 an updated budget and coin report at Docket Number 2648.
3 Are you familiar with that report? And can you please give
4 an update to the Court on the latest liquidity forecast and
5 how that compares to prior forecasts?

6 MR. FERRARO: Yeah, I am familiar with the report.
7 With respect to the latest or two-week cash flow forecasts,
8 we project approximately \$77 million of cash and \$57 million
9 of baseline liquidity in the middle of the -- of August.
10 And the difference between the 77 and the 57 is the \$20
11 million of kind of operating cash buffer.

12 Operating cash still remains positive, supported
13 by the price of Bitcoin, which is currently around \$27,000,
14 up 60 percent year-to-date, making the mining operation more
15 attractive and productive. The latest liquidity forecast is
16 roughly 9 million lower than our previous forecast, which is
17 largely the result of non-operating activity, including from
18 expected sales and use taxes related to the legacy purchase
19 of mining rigs.

20 That's all I have for you today, Your Honor,
21 unless you have any questions, I'm finished.

22 THE COURT: No, I don't, thank you very much, Mr.
23 Ferraro. Mr. Kwasteniet, go ahead.

24 MR. KWASTENIET: Thank you, Your Honor. Before
25 turning to the agenda, I was prepared to give Your Honor and

1 the parties in interest a brief update on the Debtors'
2 auction process, which has been ongoing since late April, if
3 Your Honor would like me to do that.

4 THE COURT: Yeah, I do want to hear about that,
5 I'm sure all of the parties in interest want to hear about
6 that.

7 MR. KWASTENIET: Great. Thank you, Your Honor,
8 and I'll try to keep it brief, and I believe that Mr.
9 Colodny from the Committee also has a few comments to make
10 about the status of the auction, and I'll kick it to him

11 But at a high level, Your Honor, the auction
12 commenced on April 25th, as disclosed in the Notice of
13 Auction that we filed on April 22nd at Docket Number 2519,
14 there were three bidders who were qualified to participate
15 in the auction. There was NovaWulf, who was a stalking
16 horse bidder, Fahrenheit LLC, and the Blockchain Recovery
17 Investment Committee, or BRIC.

18 Your Honor, the auction remains ongoing and while
19 the auction terms are confidential, there's a few highlights
20 I can share at this time. First, the auction is working as
21 intended and participation has been robust and active. Each
22 bidder has been in the lead of the auction at least once.
23 And the value of the Debtors' estates have achieve, thus
24 far, can be measured in the hundreds of millions of dollars.

25 Second, while this auction process has been slower

1 than we all would have hoped, the Debtors, the Committee,
2 and the bidders have been hard at work behind the scenes.
3 This is not a typical bankruptcy auction involving the mere
4 sale of assets where bidders are simply competing with each
5 other to see who can bid the highest number. That type of
6 auction could be concluded in a day or two. But here, the
7 bidders are competing for the right to be selected to manage
8 the Debtors' assets on a post-bankruptcy basis and the
9 Debtors and the Committee are having to evaluate what the
10 bidders bring to the table, including their visions for the
11 future, and this process has involved extensive discussions
12 and due diligence, and involves many factors that are not
13 easy to quantify or compare.

14 I would also note that as contemplated by the
15 bidding procedures, the Debtors and the Committee have
16 worked very well together in evaluating the bids and
17 determining how to proceed through the auction. While the
18 Debtors and Committee have not always agreed on how to score
19 each individual aspect of each individual bid, the Debtors
20 and the Committee have agreed on each leading bidder
21 throughout the process and have been aligned on how to best
22 maximize value through the auction.

23 Your Honor, the Debtors and the Committee did
24 select the BRIC bid as a Plan B, backup bid and are working
25 to document the terms of that bid. At a high level, what

1 the BRIC plan provides for is for (a) a pure play, publicly
2 trading mining business in which the Celsius creditors would
3 receive 100 percent of the interests in the mining company,
4 with a potential management contract with GXD; (b) a liquid
5 crypto distribution to the Celsius creditors on or as soon
6 as practical after the effective date; (c) a timely
7 monetization of the remaining assets of the Debtors estates
8 and subsequent liquid crypto distributions to creditors; and
9 (d) an orderly wind down.

10 The BRIC bid differs from the Fahrenheit and
11 NovaWulf bids in that it does not envision the creation of a
12 going concern NewCo outside of the mining business and the
13 monetization and wind down activities I just mentioned. The
14 Debtors and the Committee believe it will be useful to have
15 the BRIC bid as a backup, if for some reason, the Plan A,
16 going concern bid, cannot be completed.

17 Your Honor, NovaWulf and Fahrenheit continue to
18 bid for the right to be the Plan A going concern bidder. At
19 present, Fahrenheit is the lead bidder of record. NovaWulf
20 has made a new bid that the Debtors and the Committee are
21 presently evaluating to determine whether it is superior to
22 the last Fahrenheit bid. While the Debtors and the
23 Committee have been committed to giving each party the time,
24 they need to formulate superior bids and put their best foot
25 forward, I do believe that the auction is now in the late

1 stages and I expect that one way or another, the auction
2 will be completed in the relative near future.

3 Your Honor, that concludes my remarks on the
4 auction and with, Your Honor's permission, I turn it over to
5 Mr. Colodny for any comments from the Committee.

6 THE COURT: Sure. Go ahead Mr. Colodny.

7 MR. COLODNY: Good afternoon, Your Honor, Aaron
8 Colodny of White and Case on behalf of the Official
9 Committee of Unsecured Creditors. I'll drop many of the
10 things, given the time limit that I was going to say.

11 You know, one point I really want to make clear is
12 that this has been a cooperative process between the Debtors
13 and the Committee, which I certainly appreciate. I also
14 want to make clear that we've made our committee members
15 available to each of the bidders to ask all of the questions
16 that they needed to ask. You know, as Mr. Kwasteniet
17 mentioned, this is not your typical bankruptcy auction where
18 we are looking at cash, stock, valuable consideration.
19 There's lots of soft factors that we're all considering
20 about how to get these companies out of bankruptcy.

21 During the auction, certain parts of the
22 structures of the bids have also changed. Prior to the
23 auction, the Debtors and the Committee were unable to reach
24 terms with the Ad Hoc Group of Borrowers and instructed the
25 bidders to proceed assuming that the loan settlement is not

1 part of the bids. The Committee believes that a settlement
2 with the Borrowers may still be possible; however, the
3 previous construction of that loan settlement became not
4 feasible, and we were required to move in a different
5 direction.

6 I'll note that we've instructed the bidders not to
7 negotiate or bid based off a settlement with the Borrowers
8 and any such settlement will have to be negotiated after the
9 conclusion of the auction and prior to the approval of the
10 disclosure statement by this Court. Any settlement also
11 will need to balance the rights of the Earn and Loan
12 Claimants to make sure their respective legal rights are
13 respected with respect to the Debtors.

14 I think that the selection of the BRIC bid is
15 incredibly important here. We are focused on -- we all know
16 we have one shot, and we're focused on getting out of
17 bankruptcy. And so, to the extent one of the Plan A's does
18 not work for any given reason, we think it's incredibly
19 important that we are able to get coins back to customers in
20 an efficient manner, as soon as possible, hence the
21 selection of the backup bid.

22 As Mr. Kwasteniet concluded, we're now considering
23 with NewCo proposal is the highest and best. But this
24 auction process must come to a close and we need to move
25 towards confirmation. We have given everybody a lot of time

1 and access to determine what is the highest and best bid.
2 We anticipate concluding the auction shortly, filing a
3 Notice of the Successful Bidder with the Court, enter a
4 Revised Plan and Disclosure Statement in short order.

5 THE COURT: Have you given the bidders a date for
6 best and final?

7 MR. COLODNY: We have not at this time, Your
8 Honor.

9 THE COURT: Has the Committee and the Debtor
10 discussed agreeing on a date for a best and final?

11 MR. COLODNY: Mr. Kwasteniet and I have had a lot
12 of discussions on how to move this forward in an expedited
13 manner and I think that we would like to have this wrapped
14 up this week. I don't want to put Mr. Kwasteniet on the
15 spot or accelerate the schedule if we still have meaningful
16 movement in value. But I am looking -- I and my
17 constituents are looking to wrap this up quickly.

18 THE COURT: All right. And either you, Mr.
19 Colodny or Mr. Kwasteniet can address this. If the -- if
20 this goes forward with BRIC as the backup bidder, tell me
21 what the contemplated structure for returning value to
22 creditors would be.

23 MR. COLODNY: So, if BRIC is the back --

24 MR. KWASTENIET: Your Honor.

25 MR. COLODNY: Go ahead.

1 MR. KWASTENIET: I'm sorry. Go ahead, Aaron.

2 MR. COLODNY: If BRIC is the backup bidder, my
3 understanding of the structure is there will be an initial
4 distribution of liquid crypto. There would be an entity
5 created to hold the illiquid investments of the Debtors,
6 that's the Institutional Loan Book, the BC Investments, and
7 other things that may take time to wind down in a value
8 maximizing manner, and those would be distributed over time.
9 There would likely be interest in a vehicle that would be
10 owned by creditors that would be used to distribute those
11 assets to creditors, and then there would be equity
12 distributed in a reorganized mining company, which would
13 operate as a going concern. So, while it's been described
14 as a wind down, I think that's an inaccurate description, I
15 think it's more of a reorganized mining company, a
16 distribution of liquid crypto, and then a vehicle created to
17 distribute the illiquid assets over time.

18 THE COURT: Mr. Kwasteniet, do you want to add
19 something?

20 MR. KWASTENIET: Nope, I agree with that, Your
21 Honor. And in response to your previous question about time
22 for a last and final, Mr. Colodny and I, the Debtors and the
23 Committee have been keeping that under, you know,
24 consideration, but the amount of value that's been achieved
25 through the subsequent rounds of bidding has been

1 substantial enough that we haven't wanted to artificially
2 truncate the auction process. So, it's a delicate balance,
3 Your Honor, but we may be getting to the point of
4 diminishing returns in sort of going back and forth. And if
5 that's the case, I think a best and final is something that
6 we've certainly discussed and would consider implementing,
7 but we're just -- we're not quite there yet.

8 THE COURT: So, as I've asked at each of these
9 hearings when I've had this update and on the possible
10 structures, to what extent, I mean, always -- have there
11 been discussions with the regulators? I'm quite concerned
12 about you headed down the road only to find that, you know,
13 I mean, what happened in Voyager that hit a roadblock with
14 regulators --

15 MR. KWASTENIET: Understood, Your Honor, we --
16 that's a daily and for me, sometimes a nightly concern that
17 I have. We have had several conversations with the
18 regulators about the Fahrenheit bid and the -- and the
19 members of the Fahrenheit group, it's a consortium bid, Your
20 Honor, and the good news from -- from my perspective is that
21 the Fahrenheit bid is largely following the NovaWulf bid
22 structure. There's some differences. The Fahrenheit bid
23 contemplates issuing equity and not a stock token, if you
24 will. And we've described those changes at a high level
25 with the regulators. Of course, the regulators need to and

1 will reserve judgment until they see final documents and
2 conduct due diligence on the various licenses that the
3 Fahrenheit parties have. But at this point, Your Honor, we
4 have kept the regulatory concerns front of mind and we're
5 confident that either party would be able to execute a
6 transaction.

7 THE COURT: Okay. Any further update on the
8 auction and bidding?

9 MR. KWASTENIET: No, that concludes my update,
10 Your Honor.

11 THE COURT: Okay. Mr. Colodny, anything you
12 wanted to add?

13 MR. COLODNY: No, Your Honor, I agree with Mr.
14 Kwasteniet's description of the auction process and the
15 conclusion of it.

16 THE COURT: Okay. All right. Let's move on with
17 the agenda then.

18 MR. KWASTENIET: Great. Your Honor, the first
19 item on the agenda for today is what we refer to as the
20 cooperating witness motion, which was filed on the docket at
21 Docket Number 2147. Your Honor, the motion seeks authority
22 to reimburse legal expenses of certain current and former
23 employees incurred in connection with various ongoing
24 criminal and civil investigations. I am pleased to report
25 that after extensive negotiations, discussions with the

1 Creditor's Committee, we have resolved their objection and
2 we've agreed to a set of procedures, which are embodied in a
3 revised form of order that we filed two nights ago at Docket
4 Number 2643.

5 THE COURT: And very quickly, I was advised about
6 the revised order. I kept looking at the agenda to see
7 whether it reflected any agreement, it didn't. So, why
8 don't you -- I take it though that there remain objections?

9 MR. KWASTENIET: Yes, Your Honor, there was one
10 objection. The one remaining objection filed by the U.S.
11 Trustee, and then there was a statement which wasn't really
12 an objection, but rather a request for access to some of the
13 information related to the investigations.

14 THE COURT: Right.

15 MR. KWASTENIET: And let me start with the one
16 objection to the motion which was filed by the U.S. Trustee.
17 As noted in the reply brief that we filed last night at
18 Docket 2653, we believe that the U.S. Trustee's objection
19 misses the mark and should be overruled. Your Honor, I
20 won't go into detail on all of the arguments in our paper,
21 but at a high level, I'd like to make the following few
22 points. First, we don't believe that Kirkland can serve as
23 independent counsel to the employees in these circumstances.
24 And in fact, if we attempted to do that, something tells me
25 that folks higher up in the U.S. Trustee's office might

1 object to that. We think that it's important that the
2 employees have their own counsel, and in fact, in many
3 circumstances whether it be a grand jury interview or other
4 criminal interview, company counsel is not invited to
5 participate, and we, of course, first and foremost and in
6 this case, only company counsel. So, we don't think that
7 Kirkland serving -- we could certainly play a role in the
8 background, gathering materials and helping to prepare
9 witnesses and facilitating, which we have -- have done and
10 will continue to do. But we don't believe that we can serve
11 as counsel -- individual counsel for these -- for these
12 individuals.

13 Second, Your Honor, the U.S. Trustee argues that
14 the relief that we are seeking is unprecedented, but we
15 noted in our papers, and I'll note again, that very similar
16 relief was approved in the ENRON case, and I'll point to the
17 citation 335 B.R. 22, 2005, it was a United States District
18 Court opinion. In the ENRON case, Your Honor, over the
19 objection of the Creditor's Committee, the Bankruptcy Court
20 authorized the Debtors to retain a law firm under Section
21 363(B)(1) of the Code to advise current and former employees
22 who are cooperating with investigations, very, very similar
23 to our fact pattern. The Bankruptcy Court's approval was
24 affirmed on appeal to the District Court and many of the
25 terms and conditions in the ENRON case related to payment

1 are similar to what we're proposing here. Your Honor, the
2 U.S. Trustee's objection really doesn't address 363(B)(1),
3 but instead focuses its argument on 503B, which is not the
4 primary basis for the relief that we're -- that we're
5 seeking.

6 Your Honor, third, cooperating with government
7 investigations including criminal investigations is simply
8 not within the ordinary course of an employee's duties. And
9 obviously former employees have no ongoing performance
10 obligations to the company. Moreover, absent advice from
11 counsel, an employee is likely to be very distracted by the
12 investigation to the detriment of performing their day job,
13 and they may overuse or underuse their constitutional right
14 against self-incrimination, which would ultimately be to the
15 detriment of the investigations.

16 Your Honor, lastly, the U.S. Trustee doesn't
17 address or refute the Debtors' business judgment. And we
18 submit that there are sound reasons which are supported by
19 the Committee to use a limited amount of estate resources to
20 pay counsel fees to current and former employees who
21 cooperate with investigations.

22 Your Honor, the first reason is that customers,
23 understandably, want to see justice done and want wrongdoers
24 to be held accountable for what happened here. That sounds
25 great, but the overwhelming majority of Celsius' employees,

1 current and former, are not wrongdoers, and yet their
2 cooperation is needed to hold the wrongdoers to account.

3 Two, Celsius has valuable claims against certain
4 former executives, which we have agreed to assign to a trust
5 for the benefit of the creditors. To successfully bring
6 those claims, we will need cooperating witnesses. Your
7 Honor has noted previously that the examiners report, while
8 very helpful, is not itself evidence and we will need to
9 build a factual record with the assistance of a great many
10 witnesses.

11 Three, cooperation with government investigations
12 will facilitate the resolution of government claims and will
13 hasten the Debtors' emergence from bankruptcy, which will
14 speed recoveries to creditors and lower the administrative
15 burn of these cases.

16 Your Honor, four, the failure to cooperate could
17 result in sanctions or penalties that could disrupt the
18 reorganization and potentially dilute the recoveries to
19 other creditors.

20 And my last point, Your Honor, is I submit that
21 it's simply not fair or reasonable to expect individuals to
22 cooperate in criminal investigations, or in civil
23 investigations that are being conducted about the backdrop
24 of criminal proceedings without the advice of counsel.
25 People have a constitutional right to not incriminate

1 themselves, and it's entirely customary and reasonable to
2 seek counsel when asked to -- for somebody -- to participate
3 in criminal or criminally related investigations.

4 Your Honor, in sum, the Debtors believe, and I
5 think the Committee agrees that there may be circumstances
6 where it benefits the estate to reimburse legal fees for
7 current and former employees, who are cooperating with the
8 ongoing investigations. I'll note that the motion is
9 procedural and if granted, does not obligate the Debtors to
10 make any specific payments, but merely provides for a set of
11 procedures that could authorize payments if the Debtors and
12 the Committee both consent with notice to the U.S. Trustee
13 and notice on the docket.

14 Your Honor, we filed the declaration from the
15 Debtors' CEO, Mr. Christopher Ferraro at Docket Number 2654
16 in connection with our reply brief last night. That further
17 supports the business judgment to seek this relief. Mr.
18 Ferraro's available to testify if Your Honor or any parties
19 have any questions. And unless Your Honor has questions for
20 me, I would yield the podium to Mr. Colodny.

21 THE COURT: Mr. Colodny, go ahead.

22 MR. COLODNY: Thank you, Your Honor, Aaron Colodny
23 on behalf of White and Case on behalf of the Official
24 Committee of Unsecured Creditors. I think the key in what
25 Mr. Kwasteniet said is that this is a procedural motion.

1 Now, we initially objected, and in that objection, we
2 raised, among other things, that these are the type of
3 requests that should be handled through the claims process
4 or the substantial contribution process. Following that
5 objection, we worked with the Debtors to develop procedures
6 and we believe those procedures provide an acceptable
7 mechanism for resolving these sort of requests in an
8 efficient manner.

9 One of the things that I was focused on was making
10 sure that the Committee has consent rights, the U.S. Trustee
11 is able to review the requests and ultimately the Court is
12 able to review these requests because we understand that any
13 payment of any administrative claim is ultimately within the
14 purview of this Court and subject to this Court's approval.
15 I think that the procedures, if Your Honor is inclined to
16 approve them, achieve all of those goals, and allow all of
17 the parties in interest the opportunity to receive -- to
18 review and evaluate those expenses, if and when the Debtors
19 and the Committee agree that they should be paid.

20 You're muted, Your Honor.

21 THE COURT: Ms. Cornell.

22 MS. CORNELL: Thank you, Your Honor. Shara
23 Cornell from the office of the United States Trustee. With
24 all due respect, I think Debtors' counsel's framing the
25 question wrong. It isn't a question about whether or not

1 these folks should have counsel, it's about who should pay
2 for it. And that really is what we're talking about here.

3 Either the employees are testifying as witnesses
4 for their employer and Kirkland can represent them, or they
5 are some type of independent informer or bad actor type, in
6 which case, they need their own counsel. But if they're not
7 representing the employer, the Debtor -- then there is no
8 benefit to the estate. If they're a benefit to the estate,
9 then Kirkland should represent them. If the individuals
10 have potentially adverse interest to the estate, why should
11 the estate foot the bill? It's effectively a bonus if it
12 doesn't benefit the estate.

13 There are people on the list that we know are
14 subject to adverse claims from the estate, as well as other
15 potential claims, specifically, while the list wasn't
16 provided to the Court, we know that the list includes Alex
17 Mashinsky as a potential recipient of funds. There is
18 absolutely --

19 THE COURT: (Indiscernible) --

20 MS. CORNELL: -- I'm sorry?

21 THE COURT: Go ahead, Ms. Cornell.

22 MS. CORNELL: There is absolutely no evidence in
23 the record of a benefit to the estate. The Ferraro
24 declaration, itself, provides no benefit to the estate and
25 it's also completely self-serving. He is also on the list

1 of recipients. He wants his own attorneys to be paid. And
2 we happen to know that he is represented by Paul Hastings
3 from the Paul Hastings disclosures in Voyager. There are a
4 lot of issues going on here, and instead of addressing their
5 burden, the Debtor would have --

6 THE COURT: You -- you would have -- do you agree
7 that under the amended order, you would have the opportunity
8 to object to any payments for counsel for specific people
9 that have been identified? Yes or no.

10 MS. CORNELL: Well, the answer is yes and no.
11 Because yes, we'll be notified, but what documents we're
12 going to be provided is not clear. Whether or not we're
13 just going to be getting a statement with, you know,
14 employee X is getting -- is requesting \$500, or if we're
15 going to be getting detailed time records, that is yet to be
16 known.

17 MR. KWASTENIET: Your Honor, if I -- if I may just
18 briefly --

19 THE COURT: No, let Ms. Cornell finish and then
20 I'll give you a chance to respond.

21 MR. KWASTENIET: Thank you.

22 MS. CORNELL: Please. Thank you very much, Your
23 Honor. Instead of meeting their burden, the Debtors, and
24 the Committee, they keep just changing the procedures. But
25 as I said the fundamental --

1 THE COURT: Well, they keep changing the procedure
2 in light of the objections trying to meet some of the
3 concerns that have been raised by the objection. Don't make
4 it sound like they're just changing the game every time this
5 comes up. They're trying -- they -- they've worked out an
6 agreement with the Committee. They've proposed an order,
7 which I only looked at last night, that gives you the
8 opportunity to object as to specific people.

9 So, you make it sound like they just keep -- every
10 time this comes forward, without letting you know, they've
11 changed the -- the approach. That's not what's happened.

12 MS. CORNELL: No. No, I apologize --

13 THE COURT: (Indiscernible) --

14 MS. CORNELL: -- Your Honor --

15 THE COURT: -- finish up with your argument.

16 MS. CORNELL: -- that was what was suggested.

17 That -- that was not my intention. I apologize.

18 THE COURT: Finish up -- finish up with your
19 argument.

20 MS. CORNELL: Yes -- yes, Your Honor. The
21 question here is what is the benefit to the estate of either
22 -- of what the Debtors are proposing, and the Committee's
23 are now in agreement, but the Committee's objection to the
24 Nolan application, which I know we'll get to later, makes
25 the exact point that I'm making. Paragraph 4 of the

1 Committee's objection says, "a party who is acting in its
2 own self-interest, such as a participant who is seeking to
3 protect its own rights in litigation is generally not found
4 to have made a substantial contribution". Mr. Nolan's
5 testimony has not resulted in any funds being paid or
6 returned to the estate. And their objection --

7 THE COURT: Okay. We'll deal with Mr. -- we'll
8 deal with Mr. Nolan when that comes on.

9 MS. CORNELL: He -- I know but --

10 THE COURT: Anything else?

11 MS. CORNELL: -- the -- Mr. Nolan's included on
12 the list.

13 THE COURT: But I am pressed for time. I'm going
14 to cut you all off. Any last comments you want to make?

15 MS. CORNELL: Yes, Your Honor.

16 THE COURT: Well, then go ahead and do it.

17 MS. CORNELL: The only -- okay. The only case
18 provided by either the Committee or the Debtors is an 18
19 years old decision from ENRON which focused solely on
20 government investigation. Here the Debtors are looking to
21 enlarge this in an unprecedented way by paying nunc pro tunc
22 fees for interview and cooperation with the examiner and
23 with the Committee's own investigation, and that is truly
24 unprecedented. Do we really want our precedent where a
25 person can hold up production of documents until they get

1 their personal attorney fees paid? Compliance with
2 production and interviews has been the basis of the Debtors'
3 key and cart motions as well. How many times, you know,
4 must a Debtors' creditors bear the burden of paying these
5 employees? You know --

6 THE COURT: Okay. Thank you very much, Ms.
7 Cordell.

8 MS. CORNELL: Okay. Thank you.

9 THE COURT: Any -- any response Mr. Kwasteniet?

10 MR. KWASTENIET: Your Honor, I will be very brief.
11 And it's funny that Ms. Cornell talks about precedent
12 because that's exactly what I want to talk about. There's
13 an unfortunate precedent in this case of the company trying
14 to cooperate with the U.S. Trustee's office, providing
15 information and then we hear wild accusations in the hearing
16 that have no basis in reality. For Ms. Cornell to suggest
17 that we are proposing to pay fees to Alex Mashinsky, when
18 we've told her 10 times that that's not the case and our
19 very procedures provide that any individuals listed in the -
20 - in the stipulation with the Committee about the
21 prosecution of future claims --

22 MS. CORNELL: Your -- Your Honor -- Your Honor I'm
23 going to have to --

24 THE COURT: Ms. Cornell --

25 MS. CORNELL: -- I'm going to have to object --

1 THE COURT: Ms. Cornell --

2 MS. CORNELL: I'm going to have to --

3 THE COURT: Ms. Cornell, I'm going to cut you off.

4 Do not interrupt. I prevented people from interrupting you.

5 Do not interrupt Ms. Kwasteniet.

6 MR. KWASTENIET: It is wildly unprofessional, Your
7 Honor, and inflammatory to suggest that we are proposing pay
8 money to Mr. Mashinsky. The procedures have been crystal
9 clear --

10 THE COURT: Okay.

11 MR. KWASTENIET: -- since day one.

12 THE COURT: Mr. Kwasteniet, that was clear to me,
13 before. Okay.

14 MR. KWASTENIET: Thank you, Your Honor. Thank
15 you, Your Honor, but we have a lot of people listening --

16 THE COURT: All right.

17 MR. KWASTENIET: -- and people tweeting, and word
18 gets out and this is how misconceptions spread and this is
19 not the first time --

20 THE COURT: Stop.

21 MR. KWASTENIET: -- that we've had a problem with
22 Ms. Cornell's comments.

23 THE COURT: Stop it. I'm taking this motion under
24 submission. I don't want to hear any further argument on
25 it. Let's move on on the agenda.

1 MR. KWASTENIET: Your Honor, the next item on the
2 agenda is the Connor Nolan motion.

3 THE COURT: Right.

4 MR. KWASTENIET: And I would cede the podium to
5 Mr. Nolan's counsel. I would just note, Your Honor, we've
6 had discussions with Mr. Nolan's counsel that if the
7 procedures motion that we just dealt with was to be
8 addressed, he might perhaps consider adjourning his motion,
9 because he is, in fact, the exact kind of person who we
10 would envision being potentially eligible for reimbursement
11 under the procedures, Your Honor. So, with that, as a
12 procedural background, I'll yield the podium.

13 THE COURT: Okay. Thank you, Mr. Kwasteniet.

14 MR. GLASSER: Good morning, Your Honor. Jim
15 Glasser, Wiggin, and Dana on behalf of Connor Nolan. Your
16 Honor, I understand you're pressed for time, so I'm going to
17 keep it very brief and frankly, just make a couple of
18 comments for the Court's consideration.

19 Mr. Nolan was 23 years old when he began working
20 at Celsius. He was 25 when Celsius paused all withdrawals.
21 Two days later he was approached by federal law enforcement
22 authorities and presented with a grand jury subpoena. A 25-
23 year-old, being handed a grand jury subpoena, he did reach
24 out to counsel, retained me. I've been representing him
25 for, I guess we're coming up on a year now, without payment

1 of any fees.

2 In response to Ms. Cornell's comment about holding
3 up proceedings, the Court should know we've made voluminous
4 document productions. We've -- we're paying hosting fees to
5 host Mr. Nolan's data. Everything that the U.S. Attorney's
6 Office has asked for that the SEC has asked for, the CFPC
7 has asked for, we've produced in a timely manner, nothing is
8 being held up.

9 THE COURT: May -- hold on, may I ask you this,
10 Mr. Glasser?

11 MR. GLASSER: Sure, of course.

12 THE COURT: You know, Mr. Nolan is entitled to a
13 ruling. It's the Court's intention to rule, hopefully
14 expeditiously with respect to the cooperating witness
15 motion, which I've just heard. What I would like to do,
16 particularly in light of Mr. Kwasteniet's comments, is
17 adjourn this hearing with respect to Nolan a little further.
18 I will enter a ruling on the cooperating witness motion. If
19 it's granted, talk with Mr. Kwasteniet, and you know, Mr.
20 Colodny, and see if you can satisfactorily resolve the
21 issue. Otherwise, we'll just put this back on.

22 I will decide it, but this may get resolved by
23 whatever ruling I enter on the cooperating witness motion.

24 MR. GLASSER: Understood, Your Honor, and that's
25 perfectly fine.

1 THE COURT: Okay. So, that's what I'd like to do.
2 The motion will be adjourned. We'll set another time,
3 hopefully after I've ruled, you can one way or the other,
4 you can talk with Mr. Kwasteniet and Mr. Colodny and see if
5 you can resolve the issue as to Mr. Nolan, okay?

6 MR. GLASSER: That's fine, Your Honor. Thank you,
7 for the Court's time.

8 THE COURT: Thanks -- thanks very much, Mr.
9 Glasser.

10 MR. GLASSER: Sure.

11 THE COURT: Okay. The next item on the agenda is
12 Jason Amerson's motion. What I'd like to deal with -- he
13 has two motions. The motion to -- I'll call it motion to
14 investigate, ECF 2252, and also his motion for an injunction
15 to bar what he considers inappropriate communications with
16 the Debtor, which is ECF 2233. I am not going to hear
17 argument on either other those motions. I intend to enter
18 an order resolving both of those issues -- both of those
19 motions without further argument. So, I'm taking those both
20 under submission and expect to rule promptly.

21 All right. Next, Mr. Kwasteniet, what's next?

22 MR. KWASTENIET: Thanks, Your Honor, Ross
23 Kwasteniet again, from Kirkland for the record. I believe
24 the next item up was the stay motion, and I would yield the
25 podium to my colleague Mr. Koenig.

1 THE COURT: Okay.

2 MR. KOENIG: Good morning, Your Honor, Chris
3 Koenig, Kirkland and Ellis, for the Debtor. This is a
4 motion filed by Mr. Frishberg and -- Mr. Frishberg and Mr.
5 Herrmann, I believe.

6 THE COURT: Right. Let me very briefly hear from
7 either -- either one of Mr. Frishberg and Mr. Herrmann, very
8 briefly and then Mr. Koenig, I'll give you a chance to
9 respond.

10 MR. HERRMANN: All right. Hello, Your Honor,
11 Immanuel Herrmann, pro se creditor. Before I begin, I'll
12 try to be very brief. I have a couple of quick housekeeping
13 things. First, Mr. Frishberg and I would like to enter into
14 the record for this motion Exhibits A, B, and C of our
15 filing DR2650. Exhibit A is our letter to the Debtors, and
16 Exhibits B and C are declarations regarding service that Mr.
17 Frishberg and I received. Is that all right with you?

18 THE COURT: I don't have them in front of me. I
19 am not going to -- I will consider it after the hearing.
20 But go ahead.

21 MR. HERRMANN: All right, that's fine, Your Honor.
22 Thank you. So, now I wanted to quickly ask if Your Honor,
23 will be considering issuing a recommendation that the
24 District Court vacate this order today? I know that that's
25 discretionary on your part --

1 THE COURT: Well, let me kind of cut -- let me cut
2 through this. I'm going to enter an order -- this motion is
3 filed as ECF 2545. It's the motion of Mr. Herrmann and Mr.
4 Frishberg seeking to stay the effectiveness or
5 implementation by this Court of the order I entered
6 regarding which entity -- which Debtor entities have
7 liability to customers. That order was ECF 2265. The
8 appeal is pending before the District Court. I'm going to
9 enter a written order denying the motion. The written order
10 will speak for itself, but I conclude that the creditors,
11 Mr. Herrmann and Mr. Frishberg, have not demonstrated a
12 strong likelihood of success on the merits, nor have they
13 shown a substantial risk of injury absent the stay.

14 There is no plan currently proposed that would
15 result in a distribution to the Series B preferred holders.
16 If and when such plan is proposed, they can come back to me
17 and ask for a further stay. They can do what they want in
18 the District Court, but you know, I'm going to enter an
19 order denying the motion. I don't need to hear further
20 argument on it. All right.

21 Next is Mr. Amerson's motion. He has two motions.

22 MR. KOENIG: Your Honor, I believe we covered
23 these motions already. We just skipped -- we had skipped
24 over Item 4; you had dealt with Items 5 and 6.

25 THE COURT: Right.

1 MR. KOENIG: And we skipped --

2 THE COURT: All right. Well, I --

3 MR. KOENIG: -- I think we're now on status
4 conferences.

5 THE COURT: Okay.

6 MR. KOENIG: Your Honor, we'll take the Herrmann
7 and the Frishberg case together and certainly let the
8 Plaintiffs speak for themselves. I can represent that we
9 spoke with both the Plaintiffs last night. We've agreed in
10 principle to a stipulation that will extend out the
11 company's deadline to file responsive pleadings to their
12 complaint through June 20th, and we expect to have -- we
13 expect to have that stipulation filed in the next day or
14 two.

15 THE COURT: That's right -- that's fine. And --
16 because I looked back at the docket, I saw there'd been a
17 series of stipulations and orders entered that had moved the
18 dates. I don't underestimate the importance of the issues
19 that each of them raise in their adversary proceedings, but
20 the issue's maybe moot by what happens in the case going
21 forward. So, that's fine. Submit the -- the new
22 stipulations and they'll be -- they'll be entered. Okay?

23 MR. KOENIG: Great. Thanks, Your Honor. And that
24 -- that leaves us with the Core Scientific matter. I don't
25 know if counsel for Core is able to join, I know that they

1 had a conflicting trial this morning, but we spoke last
2 night. We just wanted to update, Your Honor. In the Core
3 Scientific Bankruptcy Case, Celsius filed a proof of claim.
4 A series of proofs of claim and a motion for an
5 administrative claim. The Core Debtors objected to both the
6 administrative claim and the proof of claim. We have agreed
7 with the Core Debtors to seek mediation over the claims that
8 Celsius has against Core, the claims that Core has against
9 Celsius. So, we are still working through the details of
10 what the mediation will look like, but we know it's been a
11 while since this issue was brought to your attention, so we
12 wanted to be sure to just update you on the current status
13 and the state of play.

14 THE COURT: All right. That's fine.

15 MR. KOENIG: I believe that that is -- I believe
16 that that's it on the agenda, Your Honor.

17 THE COURT: Okay. Yeah, and look I've -- in past
18 hearings I've certainly tried to allow as much time as
19 people want to speak, but the Court is really pressed for
20 time today. I've got another large omnibus hearing in
21 another large matter and I'm on a train to DC this
22 afternoon. That's one of the reasons and I'm going to be
23 out for a period of time. So, all right.

24 Obviously, keep me -- keep the Court and the
25 parties advised with respect to the developments in the

1 auction and I look forward to see where we go from here.

2 Okay.

3 MR. KWASTENIET: Thank you.

4 MR. KWASTENIET: Thank you, Your Honor.

5 THE COURT: Thank you, very much. Okay, we're
6 adjourned.

7 MR. KWASTENIET: Bye, bye.

8 (Whereupon these proceedings were concluded at
9 10:44 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: May 19, 2023

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